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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

MELODY JO SAMUELSON,  
Plaintiff and Respondent,

v.

DEPARTMENT OF STATE HOSPITALS,  
et al.,  
Defendants and Appellants.

A143149

(Napa County  
Super. Ct. No. 2657631)

Plaintiff Melody Jo Samuelson, a psychologist at Napa State Hospital, sued defendants Department of State Hospitals and three psychologists employed at Napa State Hospital for, respectively, employer retaliation (Lab. Code, § 1102.5) and violation of the California Whistleblower Protection Act (Gov. Code, § 8547.8, subd. (c)). Samuelson prevailed at trial and a jury awarded her \$1 million in damages. Samuelson moved to recover statutory attorney fees, and after a contested hearing, the trial court granted her motion in part and awarded \$1,231,188.70 in attorney fees. Defendants now appeal from portions of the order awarding attorney fees.

This is the second appeal arising out of the trial of this matter. In the first appeal, from the judgment after jury verdict, we concluded that there was insufficient evidence to support the award of economic damages for lost income capacity, and reduced the judgment by \$695,000. (*Samuelson v. Department of State Hospitals, et al.* (Oct. 28, 2016, A141659) (*Samuelson I.*)). In light of our decision in *Samuelson I*, we will remand this matter to give the trial court the opportunity to reconsider the award of attorney fees

in light of the modified judgment. In so doing, we are not suggesting that the trial court should reduce the attorney fees. In addition, because two of the issues raised in this appeal are unrelated to the amount of the damages judgment, we address them now to guide the trial court on remand.

## **BACKGROUND**

The facts and procedural history of this case through jury verdict are set forth in our opinion in *Samuelson I*. We describe here only the background relevant to Samuelson's motion for attorney fees.

Samuelson commenced this action in November 2011. She alleged violations of two separate whistleblower protection statutes: (1) violation of Government Code section 8547.8, subdivision (c)) against defendants Jim Jones, Deborah White, and Nami Kim; and (2) violation of Labor Code section 1102.5 against the Department of State Hospitals. A jury trial began in January 2014 and lasted approximately five weeks. The jury ruled in favor of Samuelson on both causes of action and awarded her a total of \$1 million. Of that amount, \$695,000 was awarded for "lost income capacity."

Following the verdict, Samuelson moved to recover attorney fees in the amount of \$1,627,100.56. She sought attorney fees under two statutes: Government Code section 8547.8, subdivision (c),<sup>1</sup> which applies to the claim brought against the individual defendants, and Code of Civil Procedure section 1021.5, which she contended applied to her claim under Labor Code section 1102.5 against Department of State Hospitals.<sup>2</sup>

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<sup>1</sup> Government Code section 8547.8, subdivision (c), provides that where liability has been established in a whistleblower action brought under section 8547.8, "the injured party shall also be entitled to reasonable attorney's fees as provided by law."

<sup>2</sup> Code of Civil Procedure section 1021.5 states, in pertinent part: "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."

The total award she sought was comprised of three components. We describe each of the components, and the trial court's ruling as to each.

*Attorney Fees for Pre-Litigation Administrative Proceedings*

Samuelson sought \$23,448 for attorney fees incurred in "pre-litigation" administrative proceedings relating to her employment and termination from Napa State Hospital. This included attorney fees for Samuelson's successful appeal of her termination to the State Personnel Board (SPB) in the amount of \$13,060.

The trial court awarded a portion of the attorney fees sought for the pre-trial administrative proceedings, including \$13,060 requested for the appeal to the SPB, and denied the rest, ruling that the other administrative proceedings were not necessary for Samuelson to exhaust her administrative remedies and were not "useful and necessary" to this litigation. In this appeal, defendants challenge the \$13,060 for attorney fees awarded for the SPB appeal.

*Paralegal Fees*

Samuelson sought \$161,880 for paralegal fees. This amount included \$132,840 for work performed voluntarily for Samuelson's attorneys by Andrew Greenberg, Samuelson's "household partner" who is a patent attorney not licensed to practice law in California.<sup>3</sup> The other fees in this category were for a paralegal named Jim Hayes.

The trial court awarded paralegal fees for Greenberg's work, but reduced the requested amount by 25 percent to \$99,600, after concluding that certain entries on Greenberg's timesheet were not reasonable, and that some of his time entries reflected a "blurring" of the line between services he rendered to Samuelson's attorneys for paralegal work, which was compensable, and support Greenberg provided to Samuelson directly, which was not. The trial court awarded all of the paralegal fees for the services of Jim Hayes. On appeal, defendants challenge only the paralegal fees awarded for Greenberg's work.

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<sup>3</sup> Samuelson also sought \$32,637.50 in attorney fees incurred in preparing her motion for attorney fees. The trial court awarded this amount to Samuelson, and defendants have not challenged this aspect of the fee award on appeal.

### *Attorney Fees in This Litigation*

Samuelson sought \$1,409,135 in fees incurred by her two attorneys in this litigation. The amount was based on the number of hours the attorneys worked, multiplied by their reasonable hourly rate, which totaled \$704,567.50. Samuelson then applied a lodestar multiplier of 2.0 and requested \$1,409,135 in fees.

The trial court found that the lodestar amount of \$704,567.50 was reasonable, but applied a 1.5 multiplier, resulting in an award of \$1,056,851.25 for this component of the fee award. Defendants do not contest the hourly rate or the number of hours expended in this part of Samuelson's attorney fee request, but appeal the award of fees, as described below.

In sum, the trial court awarded Samuelson a total of \$1,231,188.70 for all components of her request.

Defendants timely appealed from the trial court's order awarding attorney fees.

### **DISCUSSION**

The standard of review of an order awarding attorney fees is well settled. “ ‘ ‘On review of an award of attorney fees . . . the normal standard of review is abuse of discretion. However, de novo review of such a trial court order is warranted where the determination of whether the criteria for an award of attorney fees . . . have been satisfied amounts to statutory construction and a question of law.’ ” (Karuk Tribe of Northern California v. California Regional Water Quality Control Bd. (2010) 183 Cal.App.4th 330, 364.)

#### **A. Remand for Consideration of the Attorney Fee Award**

Defendants argue that if we reverse the underlying judgment against defendants, we must also vacate the award of attorney fees. As we discussed, our decision in *Samuelson I* reduced the amount of the judgment by a substantial sum upon our conclusion that \$695,000 in damages awarded for lost income capacity was not supported by substantial evidence. Because the sum awarded for lost income capacity was a significant part of the total damages awarded, the trial court should have the opportunity to reconsider whether the attorney fees sought by plaintiff are reasonable. (See

*Greenwich S.F., LLC v. Wong* (2010) 190 Cal.App.4th 739, 768 [remanding for trial court to reassess attorney fee award after \$600,000 of damages award reversed].) We are not suggesting that the trial court should reduce the amount of attorney fees or that it should remain the same, only that this determination is for the trial court to make in the first instance.

As guidance to the trial court on remand, we make the following observations:

Defendants, all of whom are represented by the Attorney General, assert that the trial court abused its discretion by not apportioning attorney fees between the claims brought against the individual defendants under Government Code section 8547.8 and the claim brought against the Department of State Hospitals under Labor Code section 1102.5. Samuelson argues that defendants forfeited this argument on appeal by failing to raise it in the trial court.

As we have discussed, Samuelson asserted two statutory bases for attorney fees: against the individual defendants under Government Code section 8547.8, subdivision (c); and against the Department of State Hospitals for her Labor Code section 1102.5 claim under a private attorney general theory pursuant to Code of Civil Procedure section 1021.5. In her motion for attorney fees to the trial court, Samuelson asserted that even if no fees were awarded against the Department of State Hospitals pursuant to Code of Civil Procedure section 1021.5, Samuelson was still entitled to an award of all compensable fees from the individual defendants under Government Code section 8547.8, subdivision (c). Samuelson reasoned that she had brought “two causes of action, each for whistleblower retaliation. The legal theory was the same for each count, and the facts were the same. Samuelson’s claims were almost identical, such that apportionment would be impracticable, if not impossible. Given that the two claims are related, and that Plaintiff achieved excellent results, no reduction in fees is appropriate.”

In defendants’ joint opposition to the motion for attorney fees, they stated that “[d]efendants acknowledge that plaintiff is entitled to reasonable attorney’s fees under Government Code section 8547.8(c).” And later in their brief, they asserted that “[a]s plaintiff notes, there is a statutory basis for attorney’s fees under Government Code

section 8547.8. *Thus, an analysis under Code of Civil Procedure section 1021.5 would not only be unnecessary, but improper, even assuming that plaintiff prevailed under Labor Code section 1102.5.*” (Emphasis added.) Although defendants then went on to argue briefly why, in their view, the private attorney general attorney fee provisions of Code of Civil Procedure section 1021.5 should not be awarded because Samuelson’s judgment against the Department of State Hospitals did not affect the public interest or confer benefit on the public within the meaning of that statute, they never argued to the trial court that fees should be apportioned because one cause of action had statutory attorney fees and the other, in defendants’ view, did not merit an attorney fee award. To the contrary, defendants did not dispute the number of trial attorney hours or the attorneys’ hourly rate.<sup>4</sup> Defendants argued only that the lodestar should be discounted by 25 percent because Samuelson did not prevail on her punitive damage claim.

At the hearing on the attorney fees motion, the trial court asked defendants’ counsel whether the State would pay any judgment against the individual defendants. Defendants’ counsel confirmed it would. The trial court took the motion under submission, and issued a detailed 12-page order several weeks later.

It was against this backdrop that the trial court determined that it only needed to address Government Code section 8547.8 in awarding attorney fees. The court wrote: “Defendants acknowledge that plaintiff is entitled to reasonable attorney fees under Government Code section 8547.8(c). That statute allows an award to any ‘person’ found to [be] liable under the whistleblower statute. Clearly, then, the three individual defendants are liable for reasonable attorney fees. However, section 8547.8(c) does not authorize an attorney fee award against the employer. [¶] The jury returned a special verdict against the employer defendant [Department of State Hospitals] for employer retaliation in violation of Labor Code section 1102.5. Section 1102.5 does not have an attorney fee provision. Therefore, plaintiff seeks attorney fees against DSH under Code

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<sup>4</sup> Samuelson sought a lodestar based in part on 954.2 hours of one of her attorney’s time at \$450 per hour, and 846.7 hours of another attorney’s time at \$325 hour.

of Civil Procedure section 1021.5, the private attorney general statute. [¶] However, at oral argument on the attorney fee motion, DSH conceded that it was liable for any attorney fee award ordered against its three employees . . . . Therefore, it is not necessary for the court to decide whether DSH has independent liability for attorney fees under Code of Civil Procedure section 1021.5 separate from any employee individual liability under Government Code section 8547.8(c). DSH is required to pay any judgment in this case, including any attorney fees, and the attorney fees order will be made effective as to DSH as well as to the individual defendants.”

Defendants’ written and oral arguments opposing the attorney fees request apparently induced the trial court into believing that it was proper to award attorney fees exclusively under Government Code section 8547.8. It appears the trial court may have confused the statement that the State was going to pay the attorney fee judgment for the individual defendants with the statutory basis to impose a direct judgment against the Department of State Hospitals, which Government Code section 8547.8 apparently does not permit.

On remand, the trial court should clarify the statutory basis, if any, on which a judgment can be entered against the Department of State Hospitals for attorney fees. We do not intend to suggest that the trial court must reduce the total fee award by apportioning fees as between causes of action. Nor are we suggesting that attorney fees cannot all be imposed on the individual defendants, where, as in this case, the Attorney General represented all defendants, put on a unified defense, and *never* argued in opposition to the attorney fees motion that some evidence was pertinent to one cause of action and not the other and thus needed to be apportioned. To the contrary, as we have noted, defendants’ position in the trial court as to the appropriate attorney fee award was that the *entire* amount (although reduced to a total of \$558,513.13) could be based entirely on Government Code section 8547.8, subdivision (c), with no apportionment factored in.

**B. *The Trial Court Did Not Abuse its Discretion in Awarding Attorney Fees for Greenberg's Paralegal Work***

Defendants challenge the fees awarded for the paralegal services provided by Greenberg, Samuelson's household partner. In the trial court, the objection to these fees was that Greenberg was Samuelson's "supportive boyfriend;" that he was an unpaid paralegal; that his billing records do not differentiate between his role as Samuelson's agent and confidante and work he was doing as a paralegal; and that the time entries are vague and duplicative, although defendants did not challenge any specific entries. Defendants urged that no amount of money should be awarded for his paralegal services.

The trial court gave a lengthy explanation for its award of some (but not all) of Greenberg's services, addressing each of defendants' objections in turn. The trial court wrote:

"Mr. Greenberg is an experienced attorney, although not licensed to practice law in California, and did not receive compensation for his paralegal services during the case. However, the fact that paralegal services are volunteered does not preclude recovery for the value of those services. *Sundance v. Municipal Court* (1987) 192 Cal.App.3d 268, 274-275 [(*Sundance*)] ('[I]t is now clear that the fact that services were volunteered is not a ground for diminishing an award of attorneys' fees . . . . [T]he amount of the award is to be made on the basis of the reasonable market value of the services rendered, and not on the salary paid.') [¶] The fact that Mr. Greenberg is plaintiff's boyfriend does complicate the analysis, however. A review of plaintiff's attorneys' and Mr. Greenberg's time records reflect a blurring of the line between Mr. Greenberg assisting the attorneys and assisting plaintiff. Mr. Greenberg's first time entries are two examples. On July 13, 2011, Mr. Greenberg bills 7.9 hours to 'prepare and transmit packet of information relating detailed case history.' Two days later, on July 15, 2011, he bills 2.5 hours for the first meeting with plaintiff's not-yet-retained attorneys, to 'prepare for and telephone conference with [attorney] and [plaintiff] regarding facts and documents.' A review of plaintiff's attorneys' time records reflect very few contacts by them with plaintiff herself; dozens if not over one hundred communications were with Mr. Greenberg, many

reflecting the types of communication that an attorney would have with a client, that Mr. Greenberg presumably passed on to plaintiff. Mr. Greenberg was intimately involved in the case and clearly acted as plaintiff's 'agent' or representative as well as performed extensive paralegal duties. [¶] Although defendants allege that Mr. Greenberg's reconstructed time records are vague and duplicative, defendants did not identify any particular time entries, and the court rejects this general objection. Nevertheless, in view of the 'blurred line' discussed above and the obligation to find that the rendered paralegal services were reasonable and necessary, the court has reviewed Mr. Greenberg's time records in detail. [¶] There are several items that the court finds were not reasonable and necessary as paralegal services. For example, Mr. Greenberg charged for approximately 30 round trips to San Francisco from his Napa home, for depositions and various meetings. That is normal commute time. He charged four hours for attending his own deposition. He charged for attending motion hearings at which a paralegal's attendance is not required. [¶] These obvious items, together with the 'blurred line' between services rendered to the attorneys and to the plaintiff, cause the court to find that the number of hours to be included in the lodestar calculation should be reduced by 25%. Plaintiff is allowed 664 hours at \$150 an hour for Mr. Greenberg's paralegal services, a total of \$99,600."

Defendants contend this part of the award was an abuse of discretion because public policy only supports an award of legal fees for volunteer legal services in public interest cases. That policy, defendants argue, should not extend "to permit a party's spouse or partner to receive 'paralegal' fees for his or her active involvement in an underlying lawsuit seeking to vindicate a private right."

This argument is not persuasive. Defendants did not dispute that appropriately billed and documented paralegal fees were recoverable.<sup>5</sup> Defendants point to no legal authority or good reason to support the position that volunteered paralegal services may

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<sup>5</sup> Defendants' objection in the trial court to paralegal fees for Jim Hayes was based on insufficient documentation.

only be compensable in a public interest lawsuit. Although *Sundance*, *supra*, 192 Cal.App.3d at pages 274-275, relied on by the trial court, is in the context of an award of fees under Code of Civil Procedure section 1021.5, there is nothing about its reasoning that necessarily restricts its application.<sup>6</sup>

Defendants also argue that the trial court erred by applying a 25 percent discount to Greenberg's fees to account for his dual role as paralegal and agent, because "it is impossible to reasonably undo the blurred lines Mr. Greenberg crossed by simply applying a discount." We find no abuse of discretion in applying a discount. "The "experienced trial judge is the best judge of the value of professional services rendered in his court," ' ' (see *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095), and it is entirely proper for a trial court to apply a discount rate to adjust for the nature of legal work performed. (See *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134 [trial court has discretion to enhance or reduce attorney fees as appropriate].) Here, the trial court reviewed Greenberg's time entries "in detail" and found that he had performed "extensive paralegal duties." But since Greenberg also performed some unnecessary legal work, in the trial court's view, and sometimes "blurred" the line between his role as paralegal and his role as Samuelson's agent, the trial court considered a 25 percent discount to be

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<sup>6</sup> The court wrote in *Sundance*, "In recent years, awards of attorneys' fees for paralegal time have become commonplace, largely without protest. [Citations.] Moreover, it is now clear that the fact that services were volunteered is not a ground for diminishing an award of attorneys' fees. As *Serrano v. Unruh* [ (1982) 32 Cal.3d 624 (*Serrano*)], indicated, the amount of the award is to be made on the basis of the reasonable market value of the services rendered, and not on the salary paid." (*Sundance*, *supra*, 192 Cal.App.3d at pp. 274-275; see also *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 702 [affirming attorney fee award based on market rate for services performed by attorneys and paralegals]; Pearl, California Attorney Fee Awards (Cont.Ed.Bar 3d ed. 2016 supp.) § 9.118 [in determining the lodestar, paralegal and law clerk time is compensable at prevailing market rates, even if volunteered, citing cases].) The *Sundance* court never limited its reasoning to cases under Code of Civil Procedure section 1021.5. And although Samuelson cited *Sundance* in her motion for fees, defendants never addressed *Sundance* in their opposition to the trial court, and never argued that volunteered paralegal services could only be recovered in public interest cases.

appropriate. Defendants have not cited to any specific time entries or other evidence that would indicate the trial court's application of a 25 percent discount was outside of its discretion.<sup>7</sup>

**C. *The Trial Court Did Not Abuse its Discretion in Awarding Attorney Fees for Samuelson's Appeal to the State Personnel Board***

Defendants challenge the trial court's award of \$13,060 in attorney fees that were incurred in connection with Samuelson's appeal to the SPB after she was terminated from Napa State Hospital.

Samuelson was terminated from Napa State Hospital in August 2010 based in large part on the allegation that she had falsely testified under oath during a trial court competency hearing involving "Patient A" in 2008. Samuelson appealed her termination to the SPB, which held hearings in January and March of 2011. The SPB issued a 17-page decision that included several detailed findings relating to Samuelson's testimony at the competency hearing. The SPB concluded that the hospital failed to prove its charges against Samuelson by a preponderance of the evidence. Samuelson was reinstated, with back pay, benefits, and interest. At the trial in this matter, the SPB decision revoking Samuelson's dismissal was admitted in evidence, and the jury was given a special jury instruction entitled: "The findings of fact and determination of issue in the State Personnel Board Decision in Dr. Samuelson's Appeal from dismissal are to be regarded as true." The instruction stated: "The [SPB] held a hearing in Dr. Melody Samuelson's appeal from dismissal. A decision was issued by the SPB on April 6, 2011 reinstating Dr. Samuelson to her position. [¶] The findings of fact and determination of issues decided by the [SPB] are to be regarded as true and determinative of the findings and issues addressed in the decision. These findings of fact and determination of issues are binding on you in your deliberations, and you may not overturn those findings and determinations of issues. The defendants cannot contest the validity of these findings of

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<sup>7</sup> The trial court used an hourly rate of \$150, which Samuelson's counsel averred was "reasonable, and, indeed, is on the low side" for paralegal work in the San Francisco Bay Area. This part of the ruling is not contested.

fact or determination of issues. The [SPB] decision has been admitted into evidence as Plaintiff's Exhibit 352." Neither collateral estoppel nor this special jury instruction was at issue in the *Samuelson I* appeal.

In her motion for attorney fees, Samuelson argued she was entitled to legal fees incurred in her appeal to the SPB. The court agreed, stating: "The 'Appeal from Dismissal' before the SPB . . . was intertwined with this whistleblower action and useful and necessary to the litigation. The SPB hearing was three days long and the Administrative Law Judge made a series of findings of fact and conclusions of law. The trial court applied the doctrine of collateral estoppel to the issues litigated in the 'Appeal from Dismissal' proceeding, precluded those issues from being relitigated in the trial, and deemed the findings to be binding on the jury." The court concluded that the hours and fees billed in connection with the SPB appeal were reasonable, and awarded the \$13,060 in attorney fees that Samuelson requested.

The parties agree that a trial court can award attorney fees incurred in administrative proceedings that are sufficiently intertwined with the underlying lawsuit. (See *Best v. California Apprenticeship Council* (1987) 193 Cal.App.3d 1448, 1461.) Defendants argue, however, that the trial court erred in determining that the SPB appeal and this lawsuit were sufficiently intertwined to warrant an attorney fee award, because the SPB appeal "was not required, nor was it useful to the issues presented at trial." We disagree.

First, defendants cite no authority to support their position that only "required" administrative proceedings are compensable. Second, on this record, we cannot say that the trial judge abused its discretion in concluding that the issues were intertwined. The court analyzed the five pre-trial administrative proceedings for which plaintiff sought attorney fees, and carefully differentiated which proceedings warranted attorney fees and which did not.<sup>8</sup> As to the SPB proceeding, defendants conceded in the trial court that the

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<sup>8</sup> Defendants contend that the trial judge properly did not award attorney fees for the *Skelly* hearing that preceded the SPB proceeding, and it therefore should have excluded attorney fees for the SPB hearing. We disagree that this shows error. The trial

findings made during the SPB appeal were binding in the trial court “with respect to whether or not [defendants] had . . . other legitimate reasons to terminate [plaintiff].” Whether a defendant has legitimate reasons for terminating or otherwise retaliating against a plaintiff is a critical issue in any whistleblower action. (See *Patten v. Grant Joint Union High School Dist.* (2005) 134 Cal.App.4th 1378, 1384 [“The elements of a section 1102.5(b) retaliation cause of action require that (1) the plaintiff establish a prima facie case of retaliation, (2) *the defendant provide a legitimate, nonretaliatory explanation for its acts*, and (3) the plaintiff show this explanation is merely a pretext for the retaliation.” (Emphasis added.)].) Because the SPB appeal addressed facts that were relevant to an issue in Samuelson’s whistleblower case, it was within the trial court’s discretion to conclude that the two proceedings were sufficiently intertwined to justify an award of attorney fees incurred in the SPB appeal.

Referring to the trial court’s reference to the doctrine of collateral estoppel, defendants also argue that even if collateral estoppel applied to certain issues in plaintiff’s whistleblower case, it could only apply with respect to Samuelson’s claim against Napa State Hospital, but not her claim against the three individual defendants because they were not parties to the SPB appeal. (*Clemmer v. Hartford Insurance Co.* (1978) 22 Cal.3d 865, 875 [due process requires that the party to be collaterally estopped must have had an identity or community of interest with, and adequate representation by, the losing party in the first action].) This argument, as applied to the attorney fee issue, is meritless. First, defendants never made the argument to the trial court in opposing attorney fees. The argument has therefore been forfeited. (*Medical Board of California v. Chiarottino* (2014) 225 Cal.App.4th 623, 632 [arguments not asserted below are not considered for first time on appeal].) Second, even if the argument was not forfeited, the

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court found that the “findings and outcome” of the *Skelly* hearing were “not useful and necessary to the litigation.” However, no record of the *Skelly* hearing was introduced in the trial, and defendants do not dispute Samuelson’s argument in her brief before us that there was really no way for the trial court to determine whether the issues at the *Skelly* hearing were interconnected with the issues raised in this case.

application of collateral estoppel was never raised on appeal in *Samuelson I*, and defendants' attempt to imply that it was applied in error in the context of the attorney fee motion is unavailing. In the trial of this case, the court did instruct the jury about the binding effect of the SPB decision, the SPB decision was admitted in evidence, and the court did not abuse its discretion in concluding that the SPB proceeding and the issues in the trial in this case were sufficiently intertwined for purposes of attorney fees.

### **DISPOSITION**

The order awarding attorney fees is reversed and the matter is remanded to the trial court for further appropriate proceedings consistent with this opinion. We are not suggesting that the trial court should reduce the amount of attorney fees awarded on remand, only that this determination is for the trial court to make in the first instance in light of the modified judgment. The parties shall bear their own costs on this appeal.

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Miller, J.

We concur:

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Kline, P.J.

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Stewart, J.

A143149, *Samuelson v. Department of State Hospitals, et al.*